



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

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OFFICE OF THE CHAIRMAN

March 25, 1998

EX PARTE OR LATE FILED

The Honorable William E. Kennard  
Chairman  
Federal Communications Commission  
1919 M Street, NW Suite 814  
Washington, DC 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

RE: Ex Parte Comment - In re Toll Free Service Access Codes, CC Docket. No. 95-155

Dear Chairman Kennard:

The Office of Advocacy of the U.S. Small Business Administration ("Advocacy") is concerned about the potential adverse economic impact on small businesses subject to the Federal Communications Commission's ("FCC" or "Commission") rules in the Toll Free Service Access Code proceeding. Many of the unresolved issues regarding the general administration of toll free numbers, the implementation of the new toll free code 877, and the replication of vanity numbers can be classified as market entry barriers for small businesses.

The Telecommunications Act of 1996 ("1996 Act") mandates that the FCC eliminate and identify market entry barriers "for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services." 47 U.S.C. § 257. Responsible Organizations ("RespOrgs") are providers of toll free numbers, which is an essential telecommunications service, and thus, fall within the scope of small businesses identified by Congress in the 1996 Act. For the record, all providers of toll free numbers and service including new entry and incumbent RespOrgs, carriers, or secondary market providers are small businesses pursuant to the mandates of Section 257.<sup>1</sup> Therefore, the Commission has a statutory duty and an obligation in the public interest to identify and eliminate market entry barriers for small telecommunications businesses affected in this proceeding.

In general, the Commission has interpreted market entry barriers to include, *inter alia*, "barriers that impede entry into the telecommunications market by existing small businesses, and obstacles that small telecommunications businesses face in providing service or expanding within the telecommunications industry . . . ."<sup>2</sup> The Commission has also noted that not all market entry barriers require governmental intervention under Section 257.<sup>3</sup> However, the instant proceeding does not fall under this limitation. The market entry barriers to small entities in this proceeding have been either caused by regulatory action or have been exacerbated by regulatory action and therefore, must be solved by regulatory action.

<sup>1</sup> For a definition of "secondary market providers," please see Office of Advocacy, U.S. Small Business Administration, Ex parte Petition for Reconsideration, Dec. 12, 1997, at 10-13.

<sup>2</sup> In re Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, Report, GN Dkt. No. 96-113, 12 FCC Rcd 16802, para. 1 (1997) ("257 Report").

<sup>3</sup> Id. para. 16.



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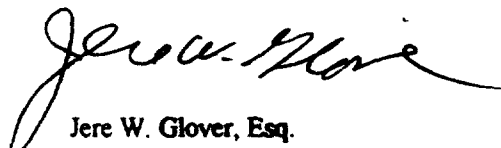
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The Commission has a statutory obligation to "administer telecommunications numbering and to make such numbers available on an equitable basis." 47 U.S.C. § 251(e)(1) (emphasis added). Therefore, the Commission has a duty to oversee the functions of organizations such as SNAC who have a substantial and significant role in the allocation and administration of toll free numbers. Whenever SNAC's implementation of the 877 plan adversely impacts small business (i.e. reduction in the allocation of numbers and inadequate modems for access to the database), the Commission has an unambiguous obligation under Sections 251 and 257 to intervene.

Additional Commission action has adversely affected small businesses. First, the inherent conflict of interest between the multiple functions of large carriers which are 1) carrier; 2) RespOrg; 3) SNAC member; and 4) subscriber, was created by FCC's regulatory structure. The administration and allocation of toll free numbers is implemented pursuant to FCC policy and is governed by FCC tariff. Second, the Commission's Second Report Order in this docket prohibits a small business subscriber from acquiring a desired toll free number on the private market as a means to mitigate its harm if that number has purposefully or mistakenly been allocated to another subscriber.<sup>4</sup> Finally, the Commission's 2-year delay in issuing final rules for vanity number replication has in itself stifled the ability of many small RespOrgs, carriers, and subscribers from expanding their businesses.

The first step in compliance with Section 257 which is the "identification" of market entry barriers has been accomplished in part by this letter in addition to the ex parte comments filed by several small businesses and the Office of Advocacy.<sup>5</sup> The second step - "elimination"- can be accomplished in part by a 30 day delay in the roll out of 877 until the allocation of numbers and access to the database issues have been sufficiently addressed and final rules have been issued regarding replication.

We sincerely hope that the Commission will take all necessary steps to eliminate the market entry barriers in this proceeding for small businesses. Thank you for your consideration.

  
Jere W. Glover, Esq.  
Chief Counsel for Advocacy

Sincerely,  
  
S. Jenell Trigg, Esq.  
Assistant Chief Counsel for Telecommunications

cc: The Honorable Susan Ness  
The Honorable Michael Powell  
The Honorable Harold Furchtgott-Roth  
The Honorable Gloria Tristani

<sup>4</sup> In re Toll Free Service Access Codes, Second Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 11162 (1997); see also 47 C.F.R. § 52.107.

<sup>5</sup> Written Ex Parte Presentation Adverse Economic Impact on Small Businesses Resulting From Proposed April 5 Implementation of 877, Joint Comments of the Office of Advocacy, TLDP Communications, Inc., ICB Inc., Response Trak Call Centers, and New England 800 Company, Mar. 17, 1998.